

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

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: UNITED STATES OF AMERICA, :  
: v. : CRIMINAL NO. 2:08-00105  
: WILLIAM S. CHESTER, JR., : OCTOBER 7, 2008  
: Defendant. :  
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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN T. COPENHAVER, JR.  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE UNITED STATES: AUSA GERALD M. TITUS  
U.S. Attorney's Office  
P.O. Box 1713  
Charleston, WV 25336

FOR THE DEFENDANT: AAFP EDWARD H. WEIS  
Federal Public Defender's Office  
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These proceedings were reported with use of a stenographic machine and transcribed with use of computer-aided transcription.

P R O C E E D I N G S

1:38 p.m.

THE CLERK: The case before the court is the *United States of America versus William Samuel Chester, Jr.*, Criminal Number 2:08-00105. Would counsel note their appearance for the record, please.

MR. TITUS: Gerald Titus on behalf of the United States.

MR. WEIS: Edward Weis for William Samuel Chester, Jr. Mr. Chester is seated to my right.

THE COURT: I believe the parties have been informed that the court has entered an order denying the motion to dismiss in this case. That brief order was entered this afternoon, and the parties will receive it doubtless in due course.

Let me ask the purpose of this hearing, Mr. Titus.

MR. TITUS: The purpose of this hearing is to allow the defendant to change his previously entered plea of not guilty to a plea of guilty.

THE COURT: And that's to the single-count indictment in the case?

MR. TITUS: Excuse me, Your Honor? I didn't hear you.

THE COURT: Is that to the single-count indictment in the case?

MR. TITUS: Yes, Your Honor.

THE COURT: And I think you said that was pursuant to

1 what I understand to be a conditional plea agreement?

2 MR. TITUS: Yes, Your Honor.

3 THE COURT: And is that your understanding as well,  
4 Mr. Weis?

5 MR. WEIS: Yes, it is, Your Honor.

6 THE CLERK: Would the defendant please stand to be  
7 sworn and raise your right hand.

8 (The defendant was sworn.)

9 **EXAMINATION OF WILLIAM SAMUEL CHESTER, JR.**

10 **BY THE COURT:**

11 Q. Mr. Chester, state your full name, please.

12 A. William Samuel Chester, Jr.

13 Q. And what city do you live in?

14 A. Right now I live in Huntington.

15 Q. And how old are you?

16 A. I'm sixty-two.

17 Q. What's the extent of your education?

18 A. I graduated from high school.

19 Q. And do you read?

20 A. Yes, sir.

21 Q. And read well?

22 A. Fairly well.

23 Q. Do you write?

24 A. Yes, sir.

25 Q. And do you write fairly well?

1 A. Yes, sir.

2 Q. Have you at any time in the last few years been under the  
3 treatment of a physician or anyone for a serious physical  
4 illness or ailment of any kind?

5 A. No, sir.

6 Q. Have you ever had occasion to consult or be under the  
7 treatment of a psychiatrist, physician, counselor, psychologist,  
8 or anyone for a mental illness or emotional disorder of any  
9 kind?

10 A. No, sir.

11 Q. Have you ever been under treatment for drug addiction?

12 A. Well, yes, sir.

13 Q. How long ago was that?

14 A. Since October.

15 Q. Are you saying last October?

16 A. October of -- yes, sir.

17 Q. A year ago.

18 A. 2007, yes, sir.

19 Q. And did you complete that treatment?

20 A. No, sir. I'm still going. It's Alcoholics Anonymous.

21 Q. I see. So that's an ongoing program.

22 A. Yes, sir.

23 Q. But you feel as though you are handling it successfully so  
24 far?

25 A. Yes, sir.

1 Q. Now then, have you had any sedatives or medication or drugs  
2 of any kind during the past 48 hours?

3 A. No, sir.

4 Q. Has the government made available to you a copy of the  
5 indictment in this case?

6 A. Yes, sir, it has.

7 Q. Have you read it?

8 A. Yes, sir.

9 Q. Have you gone over it with your attorney, Mr. Weis, as well?

10 A. Yes, sir.

11 Q. Has he explained to you everything you didn't already  
12 understand about it after you first read it?

13 A. Yes, sir.

14 Q. Now, notwithstanding your telling me that, I'm going to read  
15 the indictment. It's rather brief.

16 In the indictment, it is charged as follows.

17 1. On or about October 10, 2007, at or near Institute,  
18 Kanawha County, West Virginia, and within the Southern District  
19 of West Virginia, defendant William Samuel Chester, Jr., did  
20 knowingly possess firearms, that is, a Taurus, Model PT911, 9  
21 millimeter pistol, and a loaded Remington, Model 870, 12 gauge  
22 shotgun, in and affecting interstate commerce.

23 Do you understand what is charged in the first paragraph?

24 A. Yes, sir.

25 Q. And 2. At the time defendant William Samuel Chester, Jr.,

1 possessed the aforesaid firearms, he had been convicted of a  
2 misdemeanor crime of domestic violence as defined in Title 18,  
3 United States Code, Section 921(a)(33), that is, convicted on or  
4 about February 4, 2005, in the Magistrate Court of Kanawha  
5 County of domestic assault and domestic battery in violation of  
6 West Virginia Code, Sections 61-2-28(a) and (b).

7 Do you understand all that as well?

8 A. Yes, sir.

9 Q. And that all that is charged to be in violation of Title 18,  
10 United States Code, Sections 922(g)(9) and 924(a)(2).

11 Do you understand that also?

12 A. Yes, sir.

13 Q. Let me note to you, sir, that if this case were to proceed  
14 to trial, in order for you to stand convicted of the offense  
15 charged against you in the indictment, it would be necessary  
16 that the government prove to the satisfaction of this court and  
17 a jury beyond a reasonable doubt each of the following three  
18 essential elements of that offense, and they are as follows:

19 First, that you were convicted in a court of a misdemeanor  
20 crime of domestic violence, that is, domestic assault and  
21 domestic battery in violation of West Virginia Code, Section  
22 61-2-28(a) and (b), as alleged in the indictment.

23 Do you understand the first element?

24 A. Yes, sir.

25 Q. And, secondly, that you thereafter knowingly possessed a

1 firearm on or about October 10, 2007, at or near Institute,  
2 Kanawha County, West Virginia, as charged in the indictment.

3 Do you understand that as well?

4 A. Yes, sir.

5 Q. And, lastly, that your possession of that firearm was in and  
6 affecting commerce.

7 Do you understand that also?

8 A. Yes, sir.

9 Q. Now, let me ask whether or not you have discussed the  
10 charges contained in that indictment thoroughly with your  
11 attorney, Mr. Weis?

12 A. Yes, sir, we have.

13 Q. Did you tell him all the facts?

14 A. Yes, sir.

15 Q. Has he counseled and advised you as to the nature of the  
16 offense with which you are charged in that indictment?

17 A. Yes, sir.

18 Q. Insofar as you can tell, has he also counseled and advised  
19 you as to all possible defenses you may have to those charges?

20 A. Yes, sir.

21 Q. Do you fully understand then the nature of the charge set  
22 out in the indictment?

23 A. Yes, sir.

24 Q. Are you ready to enter a plea to that charge?

25 A. Excuse me? I didn't understand.

1 Q. Are you ready to enter a plea to that charge?

2 A. Yes, sir. Excuse me.

3 Q. Now, just answer that yes or no at this point.

4 A. Yes, sir.

5 Q. Very good.

6 THE COURT: The court understands that a plea agreement  
7 has been entered into, and I'll ask, Mr. Titus, if you have the  
8 original of that agreement, if I might see it, please.

9 MR. TITUS: Yes, Your Honor. May I approach?

10 THE COURT: Please.

11 Q. Mr. Chester, I have before me what appears to be a seven  
12 page written plea agreement dated August 12, 2008. It is  
13 addressed to your attorney, Mr. Weis, and it's from the United  
14 States Attorney, and signed on his behalf by Mr. Titus as  
15 Assistant United States Attorney. There is an eighth page that  
16 is labeled, Stipulation of Facts, Plea Agreement Exhibit A, that  
17 is attached to that plea agreement.

18 Is that the plea agreement that you read?

19 A. Yes, sir, it is.

20 Q. Have you been over this plea agreement thoroughly with your  
21 attorney?

22 A. Yes, sir, we have.

23 Q. Has he explained to you everything you didn't already  
24 understand about it after you first read it?

25 A. Yes, sir.



1 Q. Do you believe that you understand everything in it?

2 A. I think I do, sir, yes.

3 Q. Now, notwithstanding your telling me that, I'm going to ask  
4 Mr. Titus to read this agreement into the record; and as he  
5 does, you'll have the original of it before you, and you can  
6 follow along with it before you, if you wish to do so, as he  
7 reads it. But in any event, I want you to listen very carefully  
8 as he reads it. If there is anything at all about it that you  
9 don't understand, I want you to interrupt him right in the  
10 middle of his reading of it, and we'll take it up then. Do you  
11 promise to do that?

12 A. Yes, sir.

13 THE COURT: Mr. Weis, could you hand the original of  
14 this agreement to Mr. Chester, please.

15 Mr. Titus.

16 MR. TITUS: Paragraph 1 provides the pending charges.  
17 Mr. Chester is charged in a one-count indictment which charges  
18 him with a violation of 18 United States Code, Sections  
19 922(g)(9) and 924(a)(2), knowingly possessing firearms  
20 subsequent to misdemeanor domestic violence conviction.

21 Paragraph 2 provides for the resolution of those charges.  
22 Should the court deny his motion to dismiss indictment,  
23 Mr. Chester will plead guilty to said one-count indictment,  
24 which charges him with a violation of 18 United States Code,  
25 Sections 922(g)(9) and 924(a)(2), knowingly possessing firearms

1 subsequent to misdemeanor domestic violence conviction.

2 Paragraph 3 sets forth the maximum potential penalty. The  
3 maximum penalty to which Mr. Chester will be exposed by virtue  
4 of this guilty plea is as follows:

5 (a) Imprisonment for a period of ten years;

6 (b) A fine of 250,000, or twice the gross pecuniary gain or  
7 twice the gross pecuniary loss resulting from defendant's  
8 conduct, whichever is greater;

9 (c) A term of supervised release of three years;

10 (d) A mandatory special assessment of 100 dollars pursuant  
11 to 18 United States Code, Section 3013; and

12 (e) An order of restitution pursuant to 18 United States  
13 Code, Sections 3663 and 3664, or as otherwise set forth in this  
14 plea agreement.

15 THE COURT: Let me interrupt at this point and ask.  
16 Mr. Chester, do you understand everything in this agreement down  
17 to this point?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Anything at all about it that you don't  
20 understand so far?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has the \$100 special assessment been paid?

23 MR. WEIS: No, Your Honor. However, he has --  
24 Mr. Chester has with him a money order in that amount and will  
25 deposit it with the clerk immediately after the proceedings are

1 concluded.

2 THE COURT: And so, the money order is present to be  
3 paid today.

4 MR. WEIS: Yes, the money order is present in the  
5 courtroom.

6 THE COURT: All right. That being the case, you  
7 understand that if that special assessment weren't paid, that  
8 the government could void this agreement. Do you understand  
9 that, do you?

10 THE DEFENDANT: Yes, sir. We have it right here.

11 THE COURT: But it is going to be paid today.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So I think there's no need then to read  
14 paragraph 4.

15 And, Mr. Chester, you may be seated during the balance of  
16 the reading.

17 THE DEFENDANT: Thank you.

18 MR. TITUS: Thank you, Your Honor.

19 Paragraph 5 provides for the payment of monetary penalties.  
20 Mr. Chester agrees not to object to the district court ordering  
21 all monetary penalties, including the special assessment, fine,  
22 court costs, and any restitution that does not exceed the amount  
23 set forth in this plea agreement, to be due and payable in full  
24 immediately and subject to immediate enforcement by the United  
25 States. So long as the monetary penalties are ordered to be due

1 and payable in full immediately, Mr. Chester further agrees not  
2 to object to the district court imposing any schedule of  
3 payments as merely a minimum schedule of payments and not the  
4 only method, nor a limitation on the methods, available to the  
5 United States to enforce the judgment.

6 Paragraph 6 discusses defendant's cooperation. Mr. Chester  
7 will be forthright and truthful with this office and other law  
8 enforcement agencies with regard to all inquiries made pursuant  
9 to this agreement, and will give signed, sworn statements and  
10 grand jury and trial testimony upon request of the United  
11 States. In complying with this provision, Mr. Chester may have  
12 counsel present except when appearing before a grand jury.

13 Paragraph 7 provides regarding use immunity. Unless this  
14 agreement becomes void due to a violation of any of its terms by  
15 Mr. Chester, nothing contained in any statement or testimony  
16 provided by him pursuant to this agreement, or any evidence  
17 developed therefrom, will be used against him, directly or  
18 indirectly, in any further criminal prosecutions or in  
19 determining the applicable guideline range under the federal  
20 sentencing guidelines.

21 Paragraph 8 discusses the limitations on immunity. Nothing  
22 contained in this agreement restricts the use of information  
23 obtained by the United States from an independent, legitimate  
24 source, separate and apart from any information and testimony  
25 provided pursuant to this agreement, in determining the

1 applicable guideline range or in prosecuting Mr. Chester for any  
2 violations of federal or state laws. The United States reserves  
3 the right to prosecute Mr. Chester for perjury or false  
4 statement if such a situation should occur pursuant to this  
5 agreement.

6 9. Stipulation of Facts and Waiver of Federal Rule of  
7 Evidence 410. The United States and Mr. Chester stipulate and  
8 agree that the facts comprising the offenses of conviction and  
9 relevant conduct include the facts outlined in the Stipulation  
10 of Facts, a copy of which is attached hereto as Plea Agreement  
11 Exhibit A. The stipulation of facts does not include all  
12 relevant conduct.

13 THE COURT: Before going on with the rest of that  
14 paragraph numbered 9, I am going to ask that you go to the  
15 attached Stipulation of Facts, being Plea Agreement Exhibit A,  
16 and read it if you would, please.

17 MR. TITUS: Stipulation of Facts, Plea Agreement  
18 Exhibit A. The United States and Mr. Chester stipulate and  
19 agree that the facts comprising the offense of conviction in the  
20 one-count indictment in the Southern District of West Virginia,  
21 Criminal Number 2:08-00105, and the relevant conduct for that  
22 offense, include the following:

23 On February 4, 2005, Mr. Chester was convicted of a  
24 misdemeanor crime of domestic violence in the Magistrate Court  
25 of Kanawha County. On October 10, 2007, officers with the

1 Kanawha County Sheriff's Department located two firearms within  
2 Mr. Chester's residence at 106 Howard Avenue, Institute, West  
3 Virginia, 25064. Officers located a Taurus, Model PT911, 9  
4 millimeter pistol in Mr. Chester's bedroom, and a loaded  
5 Remington, Model 870, 12 gauge shotgun in a pantry adjacent to  
6 the kitchen. Mr. Chester's residence is within the Southern  
7 District of West Virginia. Mr. Chester is the owner of the two  
8 firearms. Both firearms are functional and have traveled in or  
9 affected interstate commerce.

10 Stipulated and agreed to, William Samuel Chester, Jr.,  
11 defendant, and it's signed, dated August 13th of 2008; Edward H.  
12 Weis, counsel for defendant, also signed August 13th of 2008;  
13 and Gerald M. Titus III, Assistant United States Attorney, also  
14 signed August 13th of 2008.

15 THE COURT: And let me interrupt. You understand the  
16 stipulation of facts is an agreement by you that those are the  
17 facts?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: But they are not all the facts, but that  
20 which is agreed to is agreed to by you and the government as  
21 being factual, correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Thank you.

24 And please go back to the reading of paragraph 9.

25 MR. TITUS: Mr. Chester agrees that if he withdraws

1 from this agreement, or this agreement is voided as a result of  
2 a breach of its terms by him, and he is subsequently tried on  
3 any of the charges in the indictment, the United States may use  
4 and introduce the Stipulation of Facts in the United States case  
5 in chief, in cross-examination of Mr. Chester or any of his  
6 witnesses, or in rebuttal of any testimony introduced by  
7 Mr. Chester or on his behalf. Mr. Chester knowingly and  
8 voluntarily waives, see *United States v. Mezzanatto*, 513 U.S.  
9 196 (1995), any right he has pursuant to Federal Rule of  
10 Evidence 410 that would prohibit such use of the Stipulation of  
11 Facts. If the court does not accept the plea agreement through  
12 no fault of the defendant, or the court declares the agreement  
13 void due to a breach of its terms by the United States, the  
14 Stipulation of Facts cannot be used by the United States.

15 The United States and Mr. Chester understand and acknowledge  
16 that the court is not bound by the Stipulation of Facts, and if  
17 some or all of the Stipulation of Facts is not accepted by the  
18 court, the parties will not have the right to withdraw from the  
19 plea agreement.

20 THE COURT: Thank you.

21 Let me interrupt again, and note to you, Mr. Chester, that  
22 under the terms of this particular paragraph numbered 9, you not  
23 only agree to those facts as they have been read into the  
24 record, but you also agree that if you withdraw from this  
25 agreement, or if this agreement is canceled or voided because of

1 any breach of its terms by you, that the government may later at  
2 any trial on these charges introduce that Stipulation of Facts  
3 as evidence in the case. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you waive any right that you would have  
6 to preclude the government from doing so. Do you understand  
7 that as well?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Please go ahead.

10 MR. TITUS: 10. Waiver of Appeal and Collateral  
11 Attack. The parties retain the right to seek appellate review  
12 of the district court's determination of the sentencing  
13 guideline range, if an objection is properly preserved.  
14 Nonetheless, Mr. Chester knowingly and voluntarily waives his  
15 right to seek appellate review of any sentence of imprisonment  
16 or fine imposed by the district court on any other ground, so  
17 long as that sentence is below or within the sentencing  
18 guideline range determined by the district court prior to any  
19 departure or variance. Similarly, the United States waives its  
20 right to seek appellate review of any sentence of imprisonment  
21 or fine imposed by the district court on any other ground, so  
22 long as that sentence is within or above the sentencing  
23 guideline range determined by the district court prior to any  
24 departure or variance.

25 Mr. Chester also knowingly and voluntarily waives the right



1 to challenge his guilty plea and his conviction resulting from  
2 this plea agreement and any sentence imposed for the conviction  
3 in any collateral attack, including, but not limited to, a  
4 motion brought under 18 United States Code, Section 2255.

5 The waivers noted above shall not apply to a postconviction  
6 collateral attack or direct appeal based on a claim of  
7 ineffective assistance of counsel.

8 THE COURT: Let me interrupt once more. Mr. Chester,  
9 do you understand what's meant by sentencing guidelines?

10 THE DEFENDANT: Halfway.

11 THE COURT: Well, that's probably at least a quarter  
12 more than others. I want to explain to you, and Mr. Weis has  
13 probably already been over this with you, but one of the things  
14 that the court will be doing in this case is to make a  
15 determination of the advisory -- under the advisory United  
16 States Sentencing Guidelines of what the advisory guideline  
17 range is. Now, the court will note to you that that's an  
18 important part of the sentencing process in this case, and  
19 although the court is not bound by that advisory range, the  
20 court will be paying close attention to it in determining what  
21 sentence to impose.

22 What the sentencing guidelines have the court doing is to  
23 take into account a number of factors that make up the  
24 sentencing guidelines; and once that is determined, then the  
25 advisory guideline range is suggested and the court reviews it

1 and considers it. What paragraph 9 is saying is that you  
2 forever waive your right to appeal any sentence that the court  
3 imposes that is within that guideline range determined by the  
4 court or below it.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And in addition to that, you forever waive  
8 your right to even appeal the court's determination of the  
9 sentencing guideline range, unless you've made objection to it  
10 by the time of the sentencing hearing or during the sentencing  
11 hearing. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you further understand that under  
14 this provision, you also not only waive any right you have to  
15 appeal your sentence under those circumstances that I've just  
16 related to you, but you also waive your right to appeal your  
17 conviction in this case, and the only exception to that is that  
18 you may possibly be able to attack the sentence or the  
19 conviction on the basis of ineffective assistance of counsel.  
20 Other than that, you effectively waive your rights of appeal.

21 In addition to that, quite apart from appeal, there is  
22 another way to attack a sentence or a conviction, and it's by  
23 what is a so-called collateral attack, sometimes called a habeas  
24 proceeding, and sometimes called by those of us who deal with  
25 the matter on a daily basis as a 2255 proceeding because that's

1 the section under which it comes. What I am saying to you now  
2 is that quite apart from an appeal, which would be taken  
3 directly as soon as I have completed ruling in your case, later  
4 on, you may be able to attack your sentence by the so-called  
5 collateral appeal or habeas proceeding or 2255 proceeding; and  
6 as a practical matter, you get one chance at that, too, if at  
7 all, but you waive your right to do so, once again, except on  
8 the basis of ineffective assistance of counsel.

9 Do you understand largely what I've told you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you have any questions about it?

12 THE DEFENDANT: No, sir. We talked about it, but, you  
13 know.

14 THE COURT: That is, we being you and Mr. Weis? We  
15 being you and Mr. Weis?

16 THE DEFENDANT: Yeah, Mr. Weis, yes.

17 THE COURT: So you've already had some discussion with  
18 him about it.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Very good.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Any other questions about it?

23 THE DEFENDANT: No, sir. I'm better informed now.

24 Thank you.

25 THE COURT: Thank you. Please go ahead.

1 MR. TITUS: 11. Conditional Plea. Notwithstanding the  
2 waiver of appeal provision of paragraph number 10 of this plea  
3 agreement, pursuant to Federal Rule of Criminal Procedure  
4 11(a)(2), Mr. Chester reserves the right, in a timely appeal  
5 from the final judgment in this case, to have the United States  
6 Court of Appeals for the Fourth Circuit review the district  
7 court's memorandum opinion and order entered on today's date  
8 denying defendant's motion to dismiss indictment, in which the  
9 only issue raised by defendant, and the only issue to be raised  
10 by defendant on appeal, in addition to sentencing issues allowed  
11 by paragraph 10 of this agreement, is whether 18 United States  
12 Code, Section 922(g)(9) is unconstitutional, either on its face  
13 or as applied to Mr. Chester in this prosecution, in light of  
14 *District of Columbia v. Heller*, 128 Supreme Court, 2783 (2008).  
15 If Mr. Chester prevails on appeal, he may withdraw his plea  
16 under this agreement, and this agreement shall be void.

17 THE COURT: Now, let me interrupt again. There is one  
18 exception to all I've told you about your right to appeal, and  
19 that's just been read to you, and as you are quite well aware,  
20 you retained the right to appeal the court's ruling on which it  
21 has entered an order today that has to do with the  
22 constitutionality of the act under which you are being  
23 prosecuted and as applied to your facts in your case, being the  
24 Second Amendment right to bear arms question that is dealt with  
25 in the *Heller* opinion that is noted here in that paragraph. You

1 retain, of course, the right to appeal on that ground. And you  
2 understand that, too.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Please go ahead.

5 MR. TITUS: 12. Waiver of Freedom of Information Act  
6 and Privacy Right. Mr. Chester knowingly and voluntarily waives  
7 all rights, whether asserted directly or by a representative, to  
8 request or receive from any department or agency of the United  
9 States any records pertaining to the investigation or  
10 prosecution of this case, including, without any limitation, any  
11 records that may be sought under the Freedom of Information Act,  
12 FOIA, 5 United States Code, Section 552, or the Privacy Act of  
13 1974, 5 United States Code, Section 552a, following final  
14 disposition.

15 THE COURT: Let me note as well. With respect to  
16 paragraph 12, another waiver, and there you understand you waive  
17 all rights that you have to request or receive any records from  
18 any department or agency of the United States pertaining to the  
19 prosecution or investigation of this case, and you make that  
20 waiver under any statute or constitutional provisions, except  
21 that there is specifically listed here two of them. Those two  
22 are what is called the Freedom of Information Act, sometimes  
23 called FOIA; the other is the Privacy Act of 1974. You waive  
24 your right specifically under those two acts. But you also  
25 waive it under every other basis that you might have had for

1 obtaining those records. Do you understand that?

2 MR. WEIS: Your Honor, this is a matter which we  
3 discussed before, and I informed Mr. Chester that this waiver  
4 does not include what would otherwise be public records of this  
5 court. In other words, he still has the right to get records  
6 which are public and lodged with the clerk of this court, since  
7 he does not have to use FOIA or other special means to get them.

8 THE COURT: That would be true.

9 THE DEFENDANT: I understand that then, yes, sir.

10 THE COURT: And you may proceed.

11 MR. TITUS: 13. Waiver of Ownership Interest.  
12 Mr. Chester hereby waives any ownership interest he may have in  
13 the Taurus, Model PT911, 9 millimeter pistol, and the Remington,  
14 Model 870, 12 gauge shotgun, set forth in the indictment, and  
15 agrees not to challenge any lawful disposition of them or  
16 destruction of the Taurus, Model PT911, 9 millimeter pistol, and  
17 the Remington, Model 870, 12 gauge shotgun, by law enforcement  
18 authorities. Should Mr. Chester make a direct appeal to the  
19 United States Court of Appeals for the Fourth Circuit pursuant  
20 to paragraph 11 of this agreement, law enforcement authorities  
21 will not dispose of or destroy the Taurus, Model PT8911, 9  
22 millimeter pistol, and the Remington, Model 870, 12 gauge  
23 shotgun, while such an appeal is pending.

24 THE COURT: I take it that it is understood by the  
25 parties then that if Mr. Chester's appeal would be successful

1 and his conviction in this case would be set aside, that he  
2 would then be able to obtain those two firearms.

3 MR. WEIS: Not necessarily, Your Honor, because there's  
4 still a question of whether or not state law prohibits his  
5 possession.

6 THE COURT: Pardon me?

7 MR. WEIS: Not necessarily because state law may still  
8 prohibit his possession. However, he would be able to assign  
9 them to a licensed firearms dealer, so he basically retains the  
10 property right in them.

11 THE COURT: Yes, and it wouldn't necessarily be limited  
12 to assigning them to a firearms dealer, I take it.

13 MR. WEIS: That's correct. He could give them to  
14 somebody. I just want to make clear we don't have any intention  
15 of violating a state law prohibition against his possession.

16 THE COURT: I understand that, but the point is that he  
17 can get them back, even though he still would not be able to  
18 lawfully possess them by virtue of state law.

19 MR. WEIS: That is correct.

20 THE COURT: And that's understood, I take it.

21 THE DEFENDANT: Yes, sir.

22 MR. TITUS: Yes, Your Honor.

23 THE COURT: Please go ahead.

24 MR. TITUS: 14. Final Disposition. The matter of  
25 sentencing is within the sole discretion of the court. The

1 United States has made no representations or promises as to a  
2 specific sentence. The United States reserves the right to:

3 (a) Inform the probation office and the court of all  
4 relevant facts and conduct;

5 (b) Present evidence and argument relative -- relevant to  
6 the factors enumerated in 18 United States Code, Section  
7 3553(a);

8 (c) Respond to questions raised by the court;

9 (d) Correct inaccuracies or inadequacies in the presentence  
10 report;

11 (e) Respond to statements made to the court by or on behalf  
12 of Mr. Chester;

13 (f) Advise the court concerning the nature and extent of  
14 Mr. Chester's cooperation; and

15 (g) Address the court regarding the issue of Mr. Chester's  
16 acceptance of responsibility.

17 15. Voiding of Agreement. If either the United States or  
18 Mr. Chester violates the terms of this agreement, the other  
19 party will have the right to void this agreement. If the court  
20 refuses to accept this agreement, it shall be void.

21 16. Entirety of Agreement. This written agreement  
22 constitutes the entire agreement between the United States and  
23 Mr. Chester in this matter. There are no agreements,  
24 understandings, or recommendations as to any other pending or  
25 future charges against Mr. Chester in any court other than the



1 United States District Court for the Southern District of West  
2 Virginia.

3 Acknowledged and agreed to on behalf of the United States,  
4 Charles T. Miller, United States Attorney, by Gerald M. Titus,  
5 III, Assistant United States Attorney.

6 And the agreement continues with a notation on the bottom of  
7 the page: I hereby acknowledge by my initials at the bottom of  
8 each page of the foregoing pages and by my signature on the last  
9 page of this seven-page agreement, that I have read and  
10 carefully discussed every part of it with my attorney, that I  
11 understand the terms of this agreement, and that I voluntarily  
12 agree to those terms and conditions set forth in the agreement.  
13 I further acknowledge that my attorney has advised me of my  
14 rights, possible defenses, the sentencing guideline provisions,  
15 and the consequences of entering into this agreement; that no  
16 promises or inducements have been made to me other than those in  
17 this agreement; and that no one has threatened me or forced me  
18 in any way to enter into this agreement. Finally, I am  
19 satisfied with the representation of my attorney in this matter.

20 And it is signed by William Samuel Chester, Jr., and Edward  
21 H. Weis, both on August 13th of 2008.

22 THE COURT: Thank you.

23 BY THE COURT:

24 Q. Mr. Chester, do you understand everything in that agreement?

25 A. Yes, sir.

1 Q. Anything about it that you don't understand?

2 A. No, sir.

3 Q. Did you approve of that agreement when it was reached?

4 A. Pardon me?

5 Q. When it was presented to you by Mr. Weis after he received  
6 it from the government attorney, did you approve of the  
7 agreement?

8 A. Yes, sir.

9 Q. And did you approve it when you signed it?

10 A. Yes, sir.

11 Q. Do you approve of it now?

12 A. Yes, sir.

13 Q. Is that your signature at the foot of the sixth page of the  
14 agreement and the -- I should say, at the foot of the seventh  
15 page of the agreement and the foot of the stipulation?

16 A. Yes, sir, it is.

17 Q. And are those your initials at the foot of the first six  
18 pages?

19 A. Yes, sir, they are.

20 THE COURT: Mr. Weis, if you would hand the original of  
21 that agreement to the clerk for filing, please.

22 Q. Mr. Chester, what then is your plea to the single-count  
23 indictment in this case?

24 A. Your Honor, I plead guilty.

25 Q. Before I accept your plea of guilty, I want to make certain

1 that you understand a number of things in connection with your  
2 plea, the charges against you, and your constitutional rights.

3 First of all, an indictment in the case, that is, the  
4 indictment in this case is only a formal charge which informs  
5 you of the offense with which you are charged and serves to  
6 bring you into court to answer that charge. It is not any  
7 evidence whatever of guilt. Do you understand that?

8 A. Yes, sir.

9 Q. Do you also understand that you are entitled to the  
10 assistance of a lawyer at every stage of these proceedings,  
11 including trial should you wish to go to trial?

12 A. Yes, sir, I understand that.

13 Q. Do you further understand that inasmuch as you are without  
14 funds with which to engage an attorney, the Federal Public  
15 Defender has been appointed to represent you, and Mr. Weis will  
16 be available to represent you at every stage of these  
17 proceedings, including trial should you wish to go to trial,  
18 without any expense whatever to you?

19 A. Yes, sir.

20 Q. And do you also understand that the costs of these  
21 proceedings will otherwise be entirely at the expense of the  
22 United States as well?

23 A. Yes, sir.

24 Q. Do you further understand that if you should instead enter a  
25 plea of not guilty, that you have the right to a speedy and

1 public trial by jury, you have the right to be confronted by the  
2 government's witnesses and to cross-examine them, you have the  
3 right to use the process of this court to compel witnesses to  
4 come in and testify on your behalf, and you are presumed to be  
5 innocent of these charges until proven guilty beyond a  
6 reasonable doubt? Do you understand all that?

7 A. Yes, sir.

8 Q. Do you further understand that if instead you did plead not  
9 guilty and went to trial, at that trial you need not take the  
10 witness stand?

11 A. Yes, sir.

12 Q. Do you further understand that if you do go to trial and if  
13 you chose not to testify, that fact would create no inference or  
14 presumption of guilt, and the jury would be so instructed,  
15 since, as I've already informed you, you are presumed to be  
16 innocent of these charges until proven guilty beyond a  
17 reasonable doubt?

18 A. Yes, sir.

19 Q. Do you understand that? Do you further understand that if  
20 you did plead not guilty, at the trial it would be necessary  
21 that the government come forward with witnesses to prove these  
22 charges against you beyond a reasonable doubt?

23 A. Yes, sir.

24 Q. Do you further understand that by entering a plea of guilty,  
25 you waive your right to require the government to prove these

1 charges against you beyond a reasonable doubt, and you waive  
2 your constitutional rights the court is telling you about?

3 A. Yes, sir.

4 Q. In particular, you waive your constitutional right against  
5 self-incrimination with respect to the offense to which you've  
6 pled guilty as set forth in the indictment.

7 A. Yes, sir.

8 Q. Do you further understand that if the court accepts your  
9 plea of guilty, there will not be a further trial of any kind,  
10 so that by pleading guilty, you waive your right to trial,  
11 including your right to trial by jury?

12 A. Yes, sir.

13 Q. Do you also understand that the court does intend to  
14 question you, under oath, on the record, and in the presence of  
15 your attorney, about the offense to which you've pled guilty;  
16 and if you fail to answer those questions truthfully, you may  
17 later be prosecuted for perjury or false swearing on account of  
18 that failure? Do you understand that?

19 A. Yes, sir.

20 Q. Do you further understand that by pleading guilty, the court  
21 may impose the same penalty as if you'd stood trial and been  
22 convicted of the offense charged against you in the indictment  
23 in this case? Do you understand all that?

24 A. Yes, sir.

25 Q. In that connection, the maximum punishment for the offense

1 to which you've pled guilty is imprisonment for as long as ten  
2 years; a fine of as much as \$250,000; a term of supervised  
3 release of as long as three years; a \$100 special assessment  
4 that you are going to pay today; and restitution as set forth in  
5 the plea agreement. Do you understand all that?

6 A. Yes, sir.

7 Q. Now then, I've indicated to you before that the court will  
8 be taking into account, among other things, the advisory United  
9 States Sentencing Guidelines in this case, and I want to go over  
10 that with you. The court would explain first to you, though,  
11 about supervised release. I've told you that the maximum term  
12 is three years, and that's probably what it will be, if the  
13 court imposes a term of imprisonment. And what that means is  
14 this.

15 In addition to any term of imprisonment that you serve in  
16 this case, you'll be on supervised release for a period of three  
17 years in all likelihood, and that term of supervised release  
18 will be subject to various terms and conditions, some of which  
19 may limit your freedom to some limited extent. The important  
20 thing about that is this. If you violated any of those terms  
21 and conditions, what that would mean is that your supervised  
22 release could be revoked; and if it were revoked, that means you  
23 could be sent back to prison to serve a further term of  
24 imprisonment which could be as long as another two years; and  
25 that, of course, would be in addition to any term of

1 imprisonment that you would already have served for this  
2 offense. And at that time, you could be placed on supervised  
3 release again; and if you violated that second term of  
4 supervised release, once again, you would be subject to a term  
5 of imprisonment of as long as two years. And if at that time  
6 the court sentenced you to less than two years, you could be  
7 placed on supervised release still again. But for all the  
8 violations of all the terms of supervised release put together,  
9 you could not be sentenced to more than a total of four years  
10 for supervised release violations. Do you understand all that?

11 A. Yes, sir.

12 Q. Now then, with respect to the advisory sentencing  
13 guidelines, in determining what the advisory sentencing  
14 guideline range is, a number of factors are taken into account.  
15 They include such things as your role in the offense to which  
16 you've pled guilty, your criminal history, whether you've  
17 accepted responsibility for your misconduct, whether you have  
18 obstructed justice in any way, whether or not you are a career  
19 criminal or make your livelihood from crime, and quite a number  
20 of other factors, and I'm not going into all those with you  
21 today, but if you have any questions about what the other  
22 factors might be, I'll be happy to undertake to answer them. Do  
23 you have any questions?

24 A. No, sir.

25 Q. Now then, let me note to you that there isn't anyone right

1 now who can tell you exactly where your advisory sentencing  
2 guideline range will fall -- not your attorney, nor the attorney  
3 for the government, nor the court. That will not become clear  
4 until after the probation department has made its presentence  
5 investigation in the case and has filed its report, and the  
6 parties have had a chance to go over it and object to it and try  
7 to work those objections out; and to the extent that objections  
8 remain, the court will pass upon them at sentencing; and at  
9 sentencing, the court may raise matters of its own, including  
10 those very same things the parties had already tried to work out  
11 by agreement. And so, until we reach the point where the court  
12 has ruled on all those matters at sentencing, it will not become  
13 clear exactly where your advisory sentencing guideline range  
14 will fall. Do you understand that?

15 A. Yes, sir.

16 Q. Now, do you also understand that that is, as I've already  
17 told you, an advisory guideline range. The court is not bound  
18 by it, but the court will be giving it close consideration in  
19 determining the sentence to impose in the case. Do you  
20 understand all that, do you?

21 A. Yes, sir.

22 Q. Let me note to you that the court is not bound by your plea  
23 agreement, but should the court not accept it, you may withdraw  
24 your plea of guilty. Do you understand that?

25 A. Yes, sir.



1 Q. Mr. Chester, you have the right to plead not guilty; and if  
2 there is any doubt whatever in your mind as to whether you are  
3 guilty or not of the charges in this case, the court would urge  
4 you to plead not guilty. What is your wish?

5 A. I wish to plead guilty.

6 Q. Other than your written plea agreement filed and read here  
7 today, have you been made any promises by anyone of leniency or  
8 light sentence or probation?

9 A. No, sir.

10 Q. Have you been threatened by anyone in any way, or has anyone  
11 used any means of intimidation or coercion or pressure to induce  
12 you to enter a plea of guilty against your will?

13 A. No, sir.

14 Q. Are you satisfied with your attorney, Mr. Weis, in this  
15 case?

16 A. Yes, sir.

17 Q. Do you feel he has represented you fully and fairly?

18 A. I didn't understand that one, sir.

19 Q. Do you believe that he has represented you fully and fairly?

20 A. Yes, sir.

21 Q. And has he spent a good deal of time with you developing  
22 this case?

23 A. Yes.

24 Q. Now, back to your written plea agreement filed and read here  
25 today. Is that the entire agreement between you and the United

1 States?

2 A. Yes, sir, it is.

3 Q. Are there any side agreements of any kind?

4 A. No, sir, there's not.

5 Q. Do you then offer to enter a plea of guilty voluntarily and  
6 of your own free will to the single-count indictment in this  
7 case?

8 A. Yes, sir, I do.

9 Q. Do you do that with the full understanding that you'll be  
10 waiving your constitutional rights the court has told you about,  
11 including your right to a fair and speedy trial by jury?

12 A. Yes, sir.

13 Q. And do you do it as well with the full knowledge of the  
14 consequences of your plea which --

15 A. Yes.

16 Q. -- includes the possible maximum penalty that the court has  
17 told you about in this case and is also set forth in your plea  
18 agreement?

19 A. Yes, sir.

20 Q. Let me ask whether or not you waive further reading of the  
21 indictment at this time in open court, or do you wish to have it  
22 read once more before your formal written plea is taken?

23 A. I waive that right.

24 THE COURT: The clerk will take the defendant's plea in  
25 writing.

1 THE CLERK: Mr. Chester, if you would please listen as  
2 I read.

3 *United States of America versus William Samuel Chester, Jr.,*  
4 Criminal Number 2:08-00105.

5 Guilty Plea.

6 In the presence of Edward H. Weis, my counsel, who has fully  
7 explained the charge contained in the indictment against me, and  
8 having received a copy of the indictment from the United States  
9 Attorney before being called upon to plead, I hereby plead  
10 guilty to the one-count indictment.

11 (Pause.)

12 THE COURT: The defendant's written plea of guilty to  
13 the single-count indictment in this case, having been signed by  
14 him in the presence of the court, is received and filed.

15 BY THE COURT:

16 Q. Mr. Chester, tell me in your own words what it is that you  
17 did as more fully charged in the indictment in this case.

18 A. Well, I was in possession of a 9 millimeter handgun and a  
19 Remington 12 gauge shotgun, and in violation of the law. I was  
20 a prohibited person in possession of the firearm.

21 Q. And when did that occur?

22 A. October, around October of 2007.

23 Q. About a year ago?

24 A. October 10, 2007, I think that was the date.

25 Q. As I say, it was about a year ago?

1 A. Yes, sir.

2 Q. And where did it occur?

3 A. At my ex-residence, 106 Howard Avenue in Dunbar, West  
4 Virginia.

5 Q. And at that time, as you indicated, you had been convicted  
6 of the misdemeanor offense of domestic violence, being in this  
7 case a violation of the two West Virginia statutes that are  
8 cited in the indictment; one for domestic assault, one for  
9 domestic battery.

10 A. That's correct.

11 Q. And those convictions were in Magistrate Court in Kanawha  
12 County in 2005; is that right?

13 A. 2004, I believe, Your Honor.

14 Q. I see.

15 A. I think. Yeah, I'm not sure.

16 Q. But was about 2004 or '05, as the case may be.

17 A. Yes, sir.

18 Q. Thank you.

19 THE COURT: And with respect to the weapons, did they  
20 travel in interstate commerce?

21 THE DEFENDANT: (No response.)

22 MR. TITUS: Yes, Your Honor, both were manufactured  
23 outside of West Virginia, and, therefore, must have traveled in  
24 interstate commerce. That opinion was rendered by a special  
25 agent with the Bureau of Alcohol, Tobacco & Firearms.

1 THE COURT: And they were operable?

2 MR. TITUS: Both were test fired and found to be  
3 functional firearms.

4 THE COURT: And I take it the parties are in agreement?

5 MR. WEIS: Yes, Your Honor.

6 THE COURT: And does the defendant have anything  
7 further with respect to the factual basis for the plea?

8 MR. WEIS: No, Your Honor.

9 THE COURT: And does the government?

10 MR. TITUS: No, Your Honor.

11 BY THE COURT:

12 Q. I'll ask you then, Mr. Chester. Did you do the acts to  
13 which you've pled guilty as more fully set forth in the  
14 indictment in this case?

15 A. Say that again, sir?

16 Q. Did you do the acts to which you've pled guilty --

17 A. Yes, sir.

18 Q. -- as more fully set forth in the indictment?

19 A. Yes, sir, they were in my possession. They belonged to me.

20 Q. And they were knowingly in your possession.

21 A. Yes, sir.

22 Q. At the time you did those acts, did you know and understand  
23 and intend what you were doing?

24 A. Well, I didn't know I was supposed to be in possession, I  
25 wasn't allowed to have them, I didn't know that part, no, sir.

1 Q. Well, is it the case that, first of all, you knew you had  
2 been convicted of the domestic assault and domestic battery back  
3 in Magistrate Court in Kanawha County in either 2004 or 2005?

4 A. Right, I knew that, yes.

5 Q. And you knew you were in possession of the Taurus 9  
6 millimeter pistol and the Remington shotgun.

7 A. Yes, sir.

8 Q. Are you telling me that you didn't know that it was an  
9 offense for one guilty of a misdemeanor to be in possession of  
10 those firearms?

11 A. No, sir, I didn't know that.

12 Q. That's what you didn't know.

13 A. That's what I didn't know.

14 Q. But you knew everything else.

15 A. I knew everything else, yes, sir.

16 Q. And so, is it fair to say that except for not knowing that  
17 it was impermissible for you to be in possession of those  
18 weapons because of your misdemeanor conviction of domestic  
19 violence, except for that, did you know and understand and  
20 intend what you were doing?

21 A. Yes, sir.

22 Q. Are you pleading guilty then because you are, in fact,  
23 guilty of that charged in the indictment, save for your  
24 contention that this is an unconstitutional application of the  
25 statute in your case?

1 A. Yes, sir. I mean, they were in my possession, so, yes, sir.

2 Q. All right. Do you understand all of the proceedings that  
3 have taken place?

4 A. Yes, sir.

5 Q. And do you wish to go forward with your plea of guilty?

6 A. Yes, sir.

7 THE COURT: The court accepts and approves the plea  
8 agreement, and finds that that agreement adequately protects the  
9 rights of the defendant and is in the interests of justice.

10 The court finds that there is a factual basis for the plea,  
11 and it is entered freely and voluntarily, and with the full  
12 knowledge of the consequences of the plea, including the  
13 possible penalty that the court may in this case impose.

14 The court accepts your plea of guilty, sir, and upon your  
15 plea of guilty, it is adjudged by the court that you are guilty  
16 of the charge contained in the indictment, and you stand  
17 convicted of one violation of Title 18, United States Code,  
18 Sections 922(g)(9) and 924(a)(2).

19 The court directs a presentence investigation by the  
20 probation department of this court, and continues your case for  
21 sentencing to January 7, 2009, at 1:30 in the afternoon.

22 I will ask if there is a pretrial services report.

23 You may be seated.

24 (Pause.)

25 THE COURT: The defendant, as I understand it, is

1 released now on a 10,000 dollar unsecured bond, and I would ask  
2 whether you've been in custody at any time; and if so, for what  
3 length on these current charges that are before the court today.

4 MR. WEIS: My recollection is that he has not been in  
5 custody. No, he has not been in custody. It was a detention  
6 motion, but it was denied and he has been on bond since.

7 THE COURT: Was he in state custody for the matter for  
8 which the officers were investigating at the time they  
9 discovered the presence of the firearms?

10 MR. WEIS: He was in custody at one point in South  
11 Central Regional Jail for a short --

12 THE COURT: Was that for a day or two?

13 THE DEFENDANT: Seven days.

14 THE COURT: Seven days.

15 THE DEFENDANT: Yes.

16 THE COURT: Now then, what is the status of your  
17 relationship with your wife?

18 THE DEFENDANT: We are divorced, Your Honor.

19 THE COURT: When were you divorced?

20 THE DEFENDANT: Well, we had the hearing two weeks ago,  
21 and we got to work out the financial details, but the divorce --

22 THE COURT: You say you have yet to work out the  
23 financial details?

24 THE DEFENDANT: No, sir, we haven't.

25 THE COURT: You have done that or not?



1 THE DEFENDANT: We have not, have not.

2 THE COURT: Does that include the home?

3 THE DEFENDANT: Yes, sir, part of it.

4 THE COURT: And are you represented by an attorney?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is she as well?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And so, are you working with each other  
9 through your attorneys?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And who is living in the home?

12 THE DEFENDANT: She is.

13 THE COURT: And that's why you moved from Dunbar to  
14 Huntington?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How long have you been in Huntington now?

17 THE DEFENDANT: About a year.

18 THE COURT: You started on the AA program about a year  
19 ago. Was that immediately following this incident?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And so, that year started October the 7th  
22 exactly last year.

23 THE DEFENDANT: I don't know exactly October 7th. It  
24 was after I met with my probation officer, Danita Miller.

25 MR. WEIS: That would have been in May, Your Honor.

1           THE COURT: I see. Did you not start the program until  
2 May?

3           THE DEFENDANT: Yes, sir.

4           THE COURT: I thought you'd indicated to me that you  
5 had been on this program since last October.

6           THE DEFENDANT: No, sir, that was a mistake on my part.  
7 I'm sorry.

8           THE COURT: And so, you've been on the program since  
9 May.

10          THE DEFENDANT: Yes, sir.

11          THE COURT: And that's once you came in to see the  
12 probation officer in this case.

13          THE DEFENDANT: Yes, sir. When she told me what I had  
14 to do to terms of my parole is when I started doing whatever she  
15 told me to do.

16          THE COURT: Now, you are retired, as I understand it.

17          THE DEFENDANT: Yes, sir.

18          THE COURT: And are you engaged in any occupation at  
19 all now?

20          THE DEFENDANT: No, sir, not right now, no, sir.

21          THE COURT: Since you have been on bond, have you had  
22 or encountered any difficulty in retaining, that is, in  
23 observing and complying with the terms of your release, one of  
24 which was that you not use alcohol to excess? Have you had any  
25 difficulty with that one?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you used alcohol at all?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you abstained completely?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And so, you are in compliance with the  
7 provision which states that you are to refrain from any use of  
8 alcohol.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And although that's not quite plain, I am  
11 going to revise that. The way it reads now is refrain from any  
12 excessive use of alcohol, and the court is going to make it that  
13 you refrain from any use of alcohol.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And --

16 THE DEFENDANT: Well, I thought it was blacked out --  
17 excuse me, it was blacked out. She had no alcohol on there, I  
18 thought.

19 THE COURT: What was probably intended was not  
20 effectively carried out.

21 THE DEFENDANT: Okay.

22 THE COURT: And so, it reads as I quoted it to you.

23 THE DEFENDANT: Okay, I'm sorry.

24 THE COURT: So at any rate, the provision now will read  
25 in accordance with what you have understood it to be anyway.

1 THE DEFENDANT: Yes.

2 THE COURT: And that is, you not use any alcohol.

3 THE DEFENDANT: Yes.

4 THE COURT: Let me ask the government whether it has a  
5 recommendation as to bond.

6 MR. TITUS: Your Honor, the United States would not  
7 object to the defendant's release on the same conditions that  
8 have been in place.

9 THE COURT: Let me ask the probation officer whether in  
10 view of the history of this matter since May, the probation  
11 officer would have any different recommendation at this stage.

12 THE PROBATION OFFICER: Your Honor, I apologize, but I  
13 haven't had a chance to really look at the pretrial services  
14 report as it was not made available to me, but based on just the  
15 conversation between the court and the defendant, it appears as  
16 if he is doing well on bond at this point. There hasn't been  
17 any infractions and he is not drinking.

18 THE COURT: Very good.

19 MR. WEIS: Your Honor, I informed Ms. Danita Miller,  
20 the probation officer, of the hearing, and she said she was  
21 going to attempt to fax a report to you noting that there had  
22 been no violations.

23 THE COURT: I have the report, and it states a  
24 recommendation that the defendant be continued on a previously  
25 executed bond, and states that, the defendant has met conditions

1 of release; yes is checked.

2 And the court will permit the defendant to remain on the  
3 same bond with that one revision that I have been making with  
4 respect to the use of alcohol, and the bond will now provide  
5 that you abstain completely from the use of alcohol; and will  
6 further provide that you continue with the AA program that you  
7 are now observing. And I would ask you, what sessions do you  
8 have under that program? And I take it they are in Huntington.

9 THE DEFENDANT: Well, I go to the noon meeting.

10 THE COURT: Is that daily?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And so, you meet five times a week, is it?

13 THE DEFENDANT: Basically, yeah, yes.

14 THE COURT: All right. Anything else?

15 THE DEFENDANT: No, sir.

16 THE COURT: Let me ask whether or not despite the  
17 divorce, you and your wife are getting along reasonably well  
18 under the circumstances.

19 THE DEFENDANT: No, sir.

20 THE COURT: So do you -- is it the case then that you  
21 communicate only through your attorneys?

22 THE DEFENDANT: That's the way it has been. I think I  
23 still have the protective order out against me, and I don't say  
24 anything to her and she is not supposed to say anything to me.

25 THE COURT: And so, you are observing the provisions of

1 the protective order.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. The court will expect you, of  
4 course, to continue to do that. And what is the relationship  
5 between you and your children?

6 THE DEFENDANT: Somewhat, you know, I speak to them  
7 when I can, but my daughter that stays with my ex-wife, she was  
8 a potential witness in this case, and I was told to stay away  
9 from her, but I think now I may be able to get in contact with  
10 her some or whatever. But the rest of my kids, we have a fairly  
11 decent relationship.

12 THE COURT: And the one who lives with your former wife  
13 is whom?

14 THE DEFENDANT: Yes. Yes, sir, she is --

15 MR. WEIS: What's her name?

16 THE DEFENDANT: Oh, what's her name, I'm sorry.

17 THE COURT: Is that Megan?

18 THE DEFENDANT: Samantha.

19 THE COURT: Samantha.

20 THE DEFENDANT: Samantha Chester, yes.

21 THE COURT: And does this protective order have  
22 anything to do with Samantha?

23 THE DEFENDANT: No, sir.

24 THE COURT: Only your ex-wife.

25 THE DEFENDANT: Right.

1           THE COURT: Is there any provision in the protective  
2 order about going about the home?

3           THE DEFENDANT: I don't know if it's really enforced or  
4 not. I just was told to stay away from them by Mr. Weis here  
5 and my divorce lawyer until we got this thing resolved, so  
6 that's what I'm doing. I don't know if it's still in effect or  
7 not. I just stay away.

8           THE COURT: So you are staying away from the home as  
9 well.

10          THE DEFENDANT: Yes, sir.

11          THE COURT: All right, very good.

12          Let me ask the parties whether or not you have anything  
13 further at this time.

14          MR. WEIS: No, Your Honor.

15          MR. TITUS: Your Honor, I am just trying to review the  
16 order to see what the conditions are regarding contact with  
17 witnesses. If I may have just a moment.

18          Your Honor, paragraph 7(j) provides that the defendant shall  
19 avoid all contact, directly or indirectly, with persons who are  
20 or who may become a victim or potential witness in the subject  
21 investigation or prosecution. I just want to note that for the  
22 court's consideration in connection with the terms and  
23 conditions of release.

24          THE COURT: Well, that's one of the terms of the bond?

25          MR. TITUS: Yes, Your Honor.

1           THE COURT: And so, it's understood that all those  
2 terms continue to be in effect. The one term that the court was  
3 modifying was to make more strict the provision that will now  
4 provide for the complete abstention from the use of alcohol.

5           MR. WEIS: The possible provision which Mr. Chester  
6 just brought up, the question is whether or not, since he has  
7 entered his guilty plea, he may now have some contact with  
8 Samantha. It would be presumably by telephone; certainly not  
9 around the home.

10           THE COURT: What's the government's position on the  
11 matter?

12           MR. TITUS: As much as I hesitate to get involved with  
13 family relationships and hesitant to say that a father should  
14 not be able to see his daughter, I would submit that there is  
15 possible issues with -- she may be a witness at the sentencing  
16 hearing. There is always that possibility. And we think  
17 caution at least for the next few months is the best policy.

18           THE COURT: Anything further on the point?

19           MR. WEIS: No, Your Honor.

20           THE COURT: I think under the circumstances, that the  
21 court will leave in place the restriction on any witness  
22 contact. And so, I'm not going to give you any relief on that  
23 at this time, Mr. Chester.

24           And let me ask the parties if you have anything further.

25           MR. TITUS: No, Your Honor.



1 MR. WEIS: No, Your Honor.

2 THE COURT: We'll stand continued as indicated, and  
3 thank you.

4 MR. WEIS: Thank you.

5 MR. TITUS: Thank you, Your Honor.

6 (At 2:42 p.m. the hearing was concluded.)

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8 REPORTER'S CERTIFICATE

9 I, Barbara Steinke, Registered Merit Reporter, do hereby  
10 certify that the foregoing proceedings were reduced to writing  
11 by me at the time and place therein mentioned, and said  
12 proceedings are a true and accurate transcript from my notes. I  
13 further certify that I am neither related to any of the parties  
14 by blood or marriage, nor do I have any interest in the outcome  
15 of the above matter.

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January 30, 2009

s/Barbara Steinke